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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,910	12/04/2003	Andrew W. Holman		4693
7590	07/28/2006		EXAMINER [REDACTED]	SMITH, PAUL B
Matthew F. Jodziewicz, Esq. 3447 Mandeville Canyon Road Los Angeles, CA 90049			ART UNIT [REDACTED]	PAPER NUMBER 3763

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/726,910	HOLMAN, ANDREW W.
	Examiner	Art Unit
	Paul B. Smith	3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12/04/2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-25 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-25 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12/04/2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the vibrating means and heating means must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.
2. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 15 and 26-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Prince ('621).

5. Prince discloses a cup for irrigating the nasal cavity comprising a bottom wall, a front wall, a first and second sidewalls. The front wall has a notch that is adapted to seal against the user's face. (See Figure 1) Prince further discloses a method of irrigating the nasal and sinus cavities comprising the steps of placing the cup with liquid against the users face maintaining a watertight seal, tilting the user's head to insert the nose into the liquid, rotating the cup to allow liquid to flow into the user's nostrils, and draining the liquid from the nasal cavity. (See Paragraph 19-20)

6. Thus, Prince appears to reasonably teach every element of claims 1-2, 15, and 26-29.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prince ('621) in view of Barnett *et al.* ('488).

10. Prince discloses a cup for irrigating the nasal cavity comprising a bottom wall, a front wall, a first and second sidewalls. The front wall has a notch that is adapted to seal against the user's face. (See Figure 1)

11. Prince fails to disclose a cup wherein the width of said sidewalls vary or where the sealing rim extends curving outwardly and downwardly away from the cup.

12. Barnett *et al.* teaches a watertight seal adapted for positioning around the nose.

(See Figure 1 and 6)

13. It would have been obvious to one of ordinary skill in the art to combine the disclosure of Prince with the teachings of Barnett *et al.* to provide a structure suitable for forming a watertight seal between an apparatus and a user's face.

14. Claims 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prince ('621) in view of Schindlegger ('504).

15. Prince discloses a cup for irrigating the nasal cavity comprising a bottom wall, a front wall, a first and second sidewalls. The front wall has a notch that is adapted to seal against the user's face. (See Figure 1)

16. Prince fails to disclose a vibrating means for vibrating fluid held in the cup.

17. Schindlegger teaches an electric apparatus adapted to stirring liquid within a bottle. The apparatus attaches to the bottom of the bottle and can be releasably attached. (See Figure 1)

Art Unit: 3763

18. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the disclosure of Prince with the teachings of Schindlegger to provide an electric vibrating means attachable to a cup for vibrating the liquid held within.

19. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prince ('621) in view of Katayev ('896).

20. Prince discloses a cup for irrigating the nasal cavity comprising a bottom wall, a front wall, a first and second sidewalls. The front wall has a notch that is adapted to seal against the user's face. (See Figure 1)

21. Prince fails to disclose a heating means for heating the liquid within the cup.

22. Katayev teaches using electric heating wires to warm liquid within a bottle. (See Figure 1)

23. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the disclosure of Prince with the teachings of Katayev to provide an electric means of heating the liquid held in the cup disclosed by Prince.

Art Unit: 3763

24. Claims 8 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prince ('621) in view of Armendariz ('569).

25. Prince discloses a cup for irrigating the nasal cavity comprising a bottom wall, a front wall, a first and second sidewalls. The front wall has a notch that is adapted to seal against the user's face. (See Figure 1)

26. Prince fails to disclose a first and second protuberance on the interior sides of said cup.

27. Armendariz teaches a mask comprising a first and second protuberance adapted to engage the nostril preventing airflow through the nose. (See Figure 2 and 4)

28. It would have been obvious at the time of the invention to one of ordinary skill in the art to modify the disclosure of Prince with the teachings of Armendariz to provide a cup with interior protuberances adapted to engage the nostrils of a patient.

29. Claims 17-22 rejected under 35 U.S.C. 103(a) as being unpatentable over Prince ('621) in view of Armendariz ('569) in further view of Schindlegger ('504).

30. Prince discloses a cup for irrigating the nasal cavity comprising a bottom wall, a front wall, a first and second sidewalls. The front wall has a notch that is adapted to seal against the user's face. (See Figure 1)

31. Prince fails to disclose a first and second protuberance on the interior sides of said cup.

32. Armendariz teaches a mask comprising a first and second protuberance adapted to engage the nostril preventing airflow through the nose. (See Figure 2 and 4)

33. Prince fails to disclose a vibration means attached to the disclosed cup.

34. Schindlegger teaches an electric apparatus adapted to stirring liquid within a bottle. The apparatus attaches to the bottom of the bottle and can be releasably attached. (See Figure 1)

35. It would have been obvious at the time of the invention for one of ordinary skill in the art to modify the original disclosure of Prince with the teachings of Armendariz and Schindlegger to provide a cup with a first and second protuberance and vibrating elements.

36. Claims 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prince ('621) in view of Armendariz ('569) in further view of Katayev ('896).

37. Prince discloses a cup for irrigating the nasal cavity comprising a bottom wall, a front wall, a first and second sidewalls. The front wall has a notch that is adapted to seal against the user's face. (See Figure 1)

38. Prince fails to disclose a first and second protuberance on the interior sides of said cup.

39. Armendariz teaches a mask comprising a first and second protuberance adapted to engage the nostril preventing airflow through the nose. (See Figure 2 and 4)

40. Prince fails to disclose a heating means for heating the liquid within the cup.

41. Katayev teaches using electric heating wires to warm liquid within a bottle. (See Figure 1)

42. It would have been obvious at the time of the invention to one of ordinary skill in the art to modify the disclosure of Prince with the teachings of Armendariz and further modify the disclosure with the teachings of Katayev to provide a cup that comprises a first and second protuberance and electric heating means.

43. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul B. Smith whose telephone number is 571-272-6022. The examiner can normally be reached on 8 am - 4 pm.

44. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

45. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Paul B Smith
Examiner
Art Unit 3763

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PBS
July 10, 2006